

## **STORM DRAINAGE EASEMENT**

(Development Name)

**THIS EASEMENT is made by and between** the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as “City,” and \_\_\_\_\_, A \_\_\_\_\_ Corporation, as owner (including successors and assigns of the City as may become applicable including the heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called “Grantor,” (if more than one grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such grantors).

### **WITNESSETH**

WHEREAS, Grantor is the owner and holder of record Title to certain real property described on Exhibit “A” which is attached hereto and incorporated herein (the Property); and

WHEREAS, the City desires to acquire a perpetual, non-exclusive easement with the right of entry in and across a portion of the property as the same is more particularly hereinafter described, with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the following facilities and appurtenances thereto, hereinafter collectively called the “Facilities,” in, upon and across said portion of the Property: a storm drainage system consisting of an open swale (ditch) and/or storm sewers with manholes and catch basins, all as shown on the plan attached hereto as Exhibit “B.”; and

WHEREAS, the initial construction and installation of the Facilities shall be made by Grantor at Grantor’s expense and the Facilities shall be the property of the City and be deemed dedicated to the City upon the City’s inspection and approval of the Facilities as installed, subject to the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described, the initial installation and maintenance of the Facilities by the Grantor, and the City, and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, the receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described, does hereby grant unto the City a perpetual, non-exclusive easement on that part of \_\_\_\_\_ of Section \_\_\_\_ (\_\_\_), Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin, more particularly described on Exhibit C attached hereto (the “Easement Area”).

1. That said Easement Area, including the ground cover and landscaping within the area, shall be maintained by the Grantor (including heirs, executors, administrators, successors and assigns).
2. That in and during whatever construction, reconstruction, enlargement or repair work is or becomes necessary in constructing and/or maintaining of said Facilities, so much of the surface or subsurface of the Easement Area on the Property as may be disturbed will, at the expense of the City, be replaced in substantially the same condition as it was prior to such disturbance; except that the City will in no case be responsible for replacing or paying for replacing any aesthetic plantings, fences, or improvements other than ordinary lawns or standard walks, roadways, driveways and parking lot surfacing which were required to be removed or were otherwise damaged in the course of doing the above work. However, the City shall indemnify and save harmless the Grantor from and against any loss, damage, claim, cost, injury or liability resulting from negligence or willful acts or omissions on the part of the City, its agents or employees in connection with said work involved in constructing and/or maintaining of said Facilities; provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses available under law which the City or Grantor are entitled to raise, excepting the defense of so-called “sovereign immunity.”
3. That no structure, fence, plantings or other improvements may be placed within the limits of the Easement Area by the Grantor, except that improvements such as walks, pavements for driveways, parking lot surfacing, landscape planting and fence may be constructed if drainage swale is enclosed in storm sewer as approved by the City Engineer, which approval shall not be unreasonably withheld, conditioned or delayed.
4. That in connection with the construction by the Grantor of any structure or building abutting said Easement Area, the Grantor will assume all liability for any damage to the Facilities in the above described Easement Area. The Grantor will also save and keep the City clear and harmless from any claims for personal injuries or property damage caused by any negligence or willful acts or omissions of the Grantor or persons acting on behalf of the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said Easement Area, and shall reimburse the City for the full amount of such loss or damage.

5. That no charges will be made against the property for the cost of maintenance or operation of said Facilities in the property. Whenever the Grantor makes application for a service connection associated with the services provided by virtue of the Facility, the regular and customary service connection charge in effect at the time of the application shall be charged and paid. The Grantor shall be responsible for the routine maintenance of land on which the easement is located.
6. The City of Franklin shall in no case be responsible for maintaining at its expense any portion of said storm drainage services outside of the Easement Area and outside the limits of any adjoining easements.
7. The Facilities shall be accessible for maintenance by the City at all times. The owner shall submit plans for approval to the City Engineer for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned or delayed.
8. That the Grantor shall submit plans for all surface alterations of plus or minus 0.05 foot or greater within the limits of said Easement Area. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed.
9. The City and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.
10. The City and Grantor each hereby waives all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy of insurance and that each party shall notify the other if such party's insurance would be so invalidated.
11. Either party hereto may enforce this easement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.
12. This easement may not be modified or amended, except by a writing executed and delivered by the City and Grantor or their respective successors and assigns.
13. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.
14. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.
15. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
16. It is understood that at some point in the future all or a portion of the Easement Area may become portions of public streets, in which event, in the City's proceedings for the acquisition of the portion of the property needed for such streets by purchase, dedication or by condemnation, said lands shall be considered the same as though this easement had not been executed or any rights granted thereby exercised.
17. That the Grantor shall submit as-built drawings of the installed facilities on mylar for approval to the City Engineer, which approval shall not be unreasonably withheld, conditioned, or delayed.

IN WITNESS WHEREOF, the Grantor has hereunto set its hands and seals

ON THIS DATE OF: \_\_\_\_\_, 200\_

\_\_\_\_\_  
Company Name  
By: \_\_\_\_\_  
Name and Title

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ ss

Before me personally appeared on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, the above named  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_  
(Name printed) (Title) (Development)

to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said corporation

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires \_\_\_\_\_

\  
CITY OF FRANKLIN  
By: \_\_\_\_\_  
Thomas M. Taylor, Mayor  
By: \_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN  
COUNTY OF MILWAUKEE ss

On this \_\_\_\_ day of \_\_\_\_\_, 200\_ before me personally appeared Thomas M. Taylor and Sandra L. Wesolowski who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority, and pursuant to resolution file No. \_\_\_\_\_ adopted by its Common Council on \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

## MORTGAGE HOLDER CONSENT

The undersigned, \_\_\_\_\_, a Wisconsin banking corporation (“Mortgagee”), as Mortgagee under that certain Mortgage encumbering the Property and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin, on \_\_\_\_\_, 20\_\_\_\_, Document No. \_\_\_\_\_, hereby consents to the execution of the foregoing easement and its addition as an encumbrance against title to the Property.

IN WITNESS WHEREOF, Mortgagee has caused these presents to be signed by its duly authorized officers, and its corporate seal to be hereunto affixed, as of the day and year first above written.

a Wisconsin Banking Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WISCONSIN)

SS

COUNTY OF MILWAUKEE)

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a Wisconsin banking corporation, and acknowledged that (s)he executed the foregoing instrument on behalf of said corporation, by its authority and for the purposes therein contained.

Name: \_\_\_\_\_

Notary Public \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

My commission: \_\_\_\_\_

This instrument was drafted by the City of Franklin.

Approved as to contents

Manager of Water Works of Franklin

Date:

Approved as to form only

City Attorney

Date:

Exhibit A

(Description of the Property)

Exhibit B

(Depiction of the Facilities)

Exhibit C

(Description of Easement Area)